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BUNGE CORPORATION

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November 17, 2000

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Suite 100
1925 K Street, N.W.
Washington, D.C. 20423

Re: Ex Parte No. 582 (Sub-No. 1), Major Rail Consolidation Procedures

Dear Secretary Williams:

Enclosed for filing are a signed original and 25 copies of the comments of Bunge Corporation. Also enclosed is a floppy disc in WordPerfect format containing the text of the comments.

Sincerely,

Darrell R. Wallace

Darrell R. Wallace
Vice President
Transportation Commodities Group

NOV 17 2000

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BEFORE THE

SURFACE TRANSPORTATION BOARD

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MAIL MANAGEMENT STB

EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF BUNGE CORPORATION IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

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Dated: November 17, 2000

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Public Record

BEFORE THE

SURFACE TRANSPORTATION BOARD

EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF BUNGE CORPORATION IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

I.

Bunge Corporation ("Bunge") submits these comments in response to the Board's Notice of Proposed Rulemaking ("NPR") contained in a Decision issued on October 3, 2000. Bunge is a diverse agricultural and food company that merchandises grain and produces numerous agricultural products. It is the third largest crusher of soybeans in North America, as well as a large corn processor. Bunge's soybean facilities produce both crude and refined soybean oil, as well as soybean meal. Bunge's shipments move on all Class I railroads and a large number of other rail carriers. Bunge submitted comments in this proceeding in response to the Advance

Notice of Proposed Rulemaking ("ANPR"), and those comments are summarized in Appendix N of the NPR.

II.

Bunge not only believes, but demonstrated factually in its ANPR filing, that Class I rail mergers severely foreclose the ability of many shippers to reach their traditional and necessary markets. So far as Bunge can determine from the NPR, Bunge's proposals to address those concerns have been ignored in the NPR, without explanation by the Board.

This market foreclosure situation develops when the pre-merger carrier serving a production point does not directly reach a large number of consumption points for the product, and therefore maintains routes over connecting gateways; but, after a merger, the new system terminates access to those gateways because the merged carrier prefers to hold traffic to its line.

In the last complete Bunge fiscal year prior to the Burlington Northern-Santa Fe merger, approximately 25 percent of Bunge's very substantial soybean meal output from its plant at Emporia, KS (amounting to some 40 percent of Bunge's rail shipments of soybean meal moved via Santa Fe/Southern Pacific gateways to SP destinations) moved via Santa Fe/Southern Pacific routes to destination markets on Southern Pacific. After the merger between BN and Santa Fe was fully implemented, approximately <u>one percent</u> of Bunge's Emporia rail shipments of soybean meal moved to customers on the former Southern Pacific lines, now operated by Union Pacific. The BN-Santa Fe merger in essence completely terminated the ability of Bunge's Emporia plant to market its products to any points other than those on the BNSF system and wiped out Bunge's market for 25 percent of the output of a valuable manufacturing facility.[1/]

In past mergers, the Board has accepted, and sometimes rationalized, such results on the theory that it is not the Board's function to protect individual competitors, but just to preserve competition. The Board's position seems to be that purchasers of products, such as those which Bunge was foreclosed from shipping from Emporia to former Southern Pacific destinations, would continue to have alternative sources of supply located on the Union Pacific/Southern Pacific system. That, however, is an extremely narrow and unrealistic concept of competition, because it overlooks the fact that the merger not only has deprived the owner of a major production facility of the full use of that asset, but also has decreased the level of competitive sellers available to buyers of the product.

Loss of markets, such as that experienced by Bunge at Emporia, also has been countenanced by the Board as advancing the efficiencies of single-line service resulting from mergers. However, while single-line service may make a railroad more efficient and more profitable, it does not play out in the form of

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[1/] Moreover, as a result of a trackage rights arrangements between BNSF and other railroads, the BNSF merger resulted in an expansion of the markets available to Bunge's competitors while Bunge's own markets were being curtailed. The ICC concluded "that will not be the kind of harm we should rectify" in a merger proceeding. Burlington Northern, et al. -- Merger -- Santa Fe Pacific, et al., 10 I.C.C. 2d 661, 782 (I.C.C. 1995).

reduced rates offered to Bunge and other shippers. It just makes the railroad more profitable.

In short, while the misfortune of one producer may be the good fortune of another, it likewise becomes the misfortune of the marketplace, which has now been segmented into two orbits, the BNSF system and the UP system, with little or no interchange between them. It is difficult, if not impossible, to see how competition either between railroads or competition to supply a product is enhanced when merging carriers can curtail market access.

III.

Although the Board's press release accompanying the NPR states that the proposed rules represent a "major shift in basis from the pro-merger approach that has guided agency merger decisions for the last 20 years" and that the crux of the Board's new merger policy will be "enhanced competition," Bunge is unable to find anything in the NPR that even preserves the competitive marketplace available to a pre-merger production facility, to say nothing about specific rules to actually enhance competition.

The NPR does state, in connection with proposed Rule 1180.1(c), that applicants must "explain how they would at a minimum preserve competitive options such as those involving the use of major existing gateways." Requiring a truly open gateway system would be a significant step in the direction of preserving markets for shippers. However, the proposed rule is deficient in its present form because it contains no minimum standards for preservation of an open gateway. Instead, the rule invites the applicant carriers to set that standard, which is like letting a rabbit take lettuce to market.

If a requirement that merging carriers shall continue to use existing gateways means simply that the switches will be left in place, then the "gateway" condition will fail to either enhance or preserve competition. An open gateway condition must be accompanied by minimum economic standards to insure a useable gateway. For example, the Board could utilize a rebuttable presumption that rate increases by the merging carriers to or from gateways may not exceed rate increases taken by the merged carrier on similar traffic moving purely within its own system, and that rate decreases by the merged carrier within its own system that are not accompanied by an offer of like rates from gateways on similar traffic must, upon challenge, be shown to be necessary in order to retain existing traffic that is subject to diversion or to increase existing traffic.

Under this type of approach, the established propensity of Class I mergers to curtail market access by rail customers would be ameliorated. Merged railroads could still raise their rates or lower them, but not for the purpose of closing a gateway. Bunge asks the Board to implement its "open gateway" policy under proposed rule 1180.1(c) by imposing the following provision.

> Applicants shall keep open all gateways between their system and any other railroad. This requirement shall include not merely the retention of facilities for

physical interchange of traffic, but shall also mean that --

> (A) There shall be a rebuttable presumption against rate increases by the applicants for the movement of any traffic over an open gateway if that increase is higher, actually or on a percentage basis, than any rate increase applied by the applicants to like traffic moving between points on the merged system. The presumption against such increases may be overcome by a showing that rate increases on gateway traffic higher than on intra-system traffic are necessary to enhance intramodal or intermodal competition.
>
> (B) The applicants may not reduce rates between points on their own system without making similar reductions available, on a percentage basis, from gateways unless the applicants can establish that their system reductions are necessary to retain traffic threatened with diversion or to attract new traffic.

Merely stating, as does the NPR, that "enhanced competition" is the goal of the new rules will not, in Bunge's view, suffice to insure such competition. Applicant carriers almost surely will suggest, as they have in every recent merger, that competition will be enhanced by a merger that produces a stronger surviving carrier.

So far, it is not clear that mergers necessarily produce stronger carriers. But, if they do over time, it does not follow that competition is enhanced as a result. In fact, the evidence, at least in the form of Bunge's experience, suggests that what mergers primarily produce is a carrier with enhanced market power that does not provide enhanced competition.

The single most significant change which the Board can make in the proposed rules is to require merging carriers to retain effective competition over existing gateways, and Bunge urges the Board to so modify the proposed rules.

Respectfully submitted,

Darrell R. Wallace

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Dated: November 17, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served, by first class mail, postage prepaid, on all parties of record this 17th day of November, 2000.

Darrell R. Wallace

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